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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,268	08/14/2006	Cyrill Zagat	3165-132	1703
6449 7590 11/18/2010 ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005				
EXAMINER				
PRYOR, ALTON NATHANIEL				
ART UNIT		PAPER NUMBER		
1616				
NOTIFICATION DATE		DELIVERY MODE		
11/18/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

Office Action Summary

Application No.

10/549,268

Applicant(s)

ZAGAR ET AL.

Examiner

ALTON N. PRYOR

Art Unit

1616

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,7,11,13 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) 3-6,8-10,12,14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,7,11,13 and 15-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's arguments filed 9/21/10 have been fully considered but they are not persuasive. See argument below. Previous rejections and other issues not addressed below are withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,7,11,13,15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anon (RD 451014; 11/10/01) and Baltruschat et al. (USPN 6683027; 1/27/04). Anon suggests a co-herbicide composition comprising picolinafen plus tritosulfuron. The composition was applied in common liquid and solid formulations. Anon does not exemplify an invention comprising picolinafen (column 8 lines 34-35) plus tritosulfuron (column 7 lines 18-30). Anon also does not teach the composition comprising the safener cloquintocet. However, Baltruschat et al. suggest herbicide compositions comprising picolinafen (column 8 lines 34-35) plus tritosulfuron (column 7 lines 18-30) plus cloquintocet (column 12 lines 5-6). Baltruschat et al. teach a method of applying the composition to crop to control weeds (abstract, claims). Like Anon, Baltruschat et al. do not exemplify an invention comprising picolinafen plus tritosulfuron plus cloquintocet. However, it would have been obvious for one of ordinary skill in the art to arrive at such an invention. One would have been motivated to this since Baltruschat et al. suggest the combination of ingredients. With respect to the instant amounts and ratios

compounds, an artisan in the field would have been expected to determine the optimum amounts and ratios of each compound. One would have been motivated to do this in order to make a herbicide composition that would have been effective at controlling weeds without destroying the crop. While Applicants' claims are drawn to synergism, Applicants provide no data in the Specification to support synergism.

Response to Applicants' argument

Applicants point to results in the tables to support their claim to synergy for the elected combination of picolinafen plus tritosulfuron, particularly Table 1 contains data for the combination of picolinafen plus tritosulfuron. The Examiner argues that the data are not convincing since some results obtained using the elected composition are not synergistic. The data are mixed some reading synergistic and others not. No clear trend of synergy has been established for elected combination of picolinafen plus tritosulfuron. An active does not have to be eliminated from Baltruschat et al. in order for Baltruschat et al. to make the instant invention obvious. Note, Baltruschat et al. suggest the combination picolinafen plus tritosulfuron with a required compound (i.e. 2-Phenyl-4-(hetero-)aryloxypyrimidine herbicide) in Baltruschat et al. Thus, the instant claims employ "comprising language" which allows for the inclusion of required component of Baltruschat et al. with the instantly claimed invention of a composition comprising picolinafen plus tritosulfuron. For the above reason, the rejection is maintained.

Election Status

Elected invention comprising picolinafen plus tritosulfuron is not allowable. The Examiner will rejoin claims according to the rules/standards set forth in the MPEP. If

Applicants' claims meet the rejoinder rules in the MPEP, the claims will be rejoined. The election/restriction requirement.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALTON N. PRYOR whose telephone number is (571)272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alton N. Pryor/
Primary Examiner, Art Unit 1616